IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 123 of 1982

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STAT ARCHITECTS

Versus

CITY CONSTRUCTION,DEVELOPMENT CORPORATION

Appearance:

1. First Appeal No. 123 of 1982

MR DEEPAK M SHAH for Appellant

MR JR NANAVATI for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 29/04/2004

ORAL JUDGEMENT

1. The appellant filed Special Civil Suit No. 60 of 1974 in the Court of learned Civil Judge (S.D.) at Rajkot

for recovering Rs.30,500-00 from the respondents. The learned Jt. Civil Judge (S.D.) Rajkot by his judgment & order dated 26-2-1980 dismissed the suit. The appellant has, therefore, filed this First Appeal under section 96 of the Civil Procedure Code.

2. The plaintiff's case was as follows :-

The defendants intended to raise a construction in the name of "Ranjit Tower", a nine storeyed building at an approximate cost of Rs.35,00,000-00 at Jamnagar. They approached the plaintiff at Rajkot and expressed the desire to engage the plaintiff as engineers & architects for the said project. After initial hesitation the plaintiff accepted the proposal and agreed to work as architects of the said project. They agreed to accept 2 1/2 % as their remuneration instead of their usual charge of 4 %. The defendants told the plaintiff to commence the work and that the formal appointment letter would be issued afterwards. Even before the receipt of appointment letter the plaintiff supplied three alternative plans for the project. After discussions final proposal was arrived at and it was approved by the defendants. Thereafter the plaintiff started working on municipal drawings. Detailed plans for all the floors, dimensions and sections were prepared and supplied to the defendants on 3-1-1974. The plaintiff also submitted detailed estimated tender specification and price schedule of quantity separately. Requirements of cement and steel were also supplied to the defendants. The plaintiff gave written proposal for the services for the above project on 8-4-1974. The plaintiff received formal letter of appointment on 2-2-1974. Under the terms of appointment plaintiff had to render service for architectural and R.C.C. designs, to supervise the construction work. The plaintiff also agreed to post an engineer at Jamnagar permanently for supervision and reporting of the work. On 22-2-1974 defendants informed the plaintiff that they had decided to appoint one Mr. Deshpande as engineer incharge of the work for the said project, though under the terms & conditions of the agreement, defendants were entitled to appoint their engineer at Jamnagar. The defendants made the appointment against the wishes of the plaintiff. By such an appointment the plaintiff was prevented from appointing an engineer at the said project as per the agreement. When the plaintiff's partner visited the project site on 28-3-1974 he found that the lay out of shops on columns was totally changed and was not done in accordance with the lay out as suggested by the plaintiff. The defendants did so without consultation

with or intimation to the plaintiff. Therefore the plaintiff made fresh designs for R.C.C. Beams and slabs on account of the above changes made by the defendants. The plaintiff received a letter dated 9-4-1974 from Mr. Deshpande in which several remarks were offered by him. The plaintiff in reply to it on 19-4-1974 stated that looking to the manner in which Mr. Deshpande put the things it was difficult for them to work honourably. The plaintiff also requested to settle their bill for the services rendered. The defendants instead of settling the bill, issued a notice to the plaintiff asking to pay Rs.7,500-00. The plaintiff replied to it and raised a demand for Rs.30,500-00. The plaintiff demanded Rs.15,500-00 for the services rendered and Rs.15,000-00 by way of compensation for breach of contract committed by the defendants. Since the defendants did not comply with the demand, the plaintiff filed the suit.

3. The defendants in their written statement refuted the averments and allegations made in the plaint and made a counter claim for Rs.7,500-00.

4. The learned Judge, after recording the evidence, oral and documentary, adduced by the parties, dismissed the suit as well as the counter claim.

5. The appellant (ori. plaintiff) has therefore file this appeal challenging the said judgment & decree. However the appellant has restricted their claim to Rs.15,000-00 in the present appeal instead of Rs.30,500-00 as originally claimed in the suit. The respondents (ori. defendants) have not filed any cross appeal or cross objections against the dismissal of their counter claim.

6. The learned advocate for the appellant submitted that the trial court had erred in finding that the plaintiff did not take steps to appoint an engineer to be stationed at work site at Jamnagar and that the defendants were entitled to appoint Mr. Deshpande as engineer. He submitted that the observations and appreciation of evidence by the trial court in para No. 51 to 67 of the judgment are basically erroneous. He contended that the finding of the trial court that the plaintiff did not perform its part of the contract in so far as it did not appoint engineer at the site was erroneous. He argued that the learned Judge was in error in taking the view that Mr. Deshpande could make changes in the suit project. He submitted that the learned Judge erred in finding that the defendants had not committed any breach of the agreement. He argued that the trial

court had erred in finding that the plaintiff did not carry out the work in accordance with the demand and the requirements and that the plaintiff had not completed the entire table work and paper work.

7. The learned advocate for the appellant has taken me through the judgment running into 114 paragraphs. He also read the oral evidence and referred me to the relevant documentary evidence and record. The entire evidence has been exhaustively dealt with by the learned Judge. Having gone through the judgment and evidence on record, I am in complete agreement with the conclusions recorded by the learned Judge on appreciation of the evidence. They are not shown to be erroneous in any way. The findings recorded by him are fully justified and warranted by the evidence on record. There is no substance in the appeal and the same is dismissed. No order as to costs.

Dt: 29-4-2004 (M.C. Patel, J)

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